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NOTES OF RECENT CASES.

Veeraswami, Chief Justice and *Gokulakrishnan, J.*
30th July, 1969.

Union of India *v.* M/s. Vijaya Agencies.
O.S.A. No. 15 of 1961.

Arbitration—Agreement—Clause for arbitration of disputes, comprehensive—Costs, charges and expenses incurred by Government due to the failure of other party to carry out the work with a view to avoiding incurrence of demurrage—Question of failure and liability left to the decision of another authority—Finality of such decision, if subject to the arbitration clause.

Under clause 17 of the agreement entered into between the parties, it was provided that all disputes and differences arising out of or in any way touching or concerning the agreement whatsoever shall be referred to the sole arbitration of any person appointed by the..............................

Clause 5 (*h*) provided that the Contractors shall be liable for all costs, charges and expenses suffered or incurred by the Government due to............their failure to carry out the work with a view to avoiding incurrence of demurrage............ The decision of the Regional Director (Food) regarding such failure of the contractors and their liability for the losses etc., suffered by Government will be final and binding on the contractors.

Held, clause 17 is so comprehensive and any dispute arising out of touching or concerning the agreement would be referable to arbitration and does not except, within this scope, any dispute which would be comprehended by clause 5 (*h*). Notwithstanding the finality attaching to the decision of the Regional Director (Food) as between the parties, under clause 5 (*h*), that finality, when the two clauses are read together, would be subject to the clause of arbitration.

Standing Counsel for Central Government, for Appellant.

C. Rangaswami Ayyangar and *V.V. Raghavan*, for Respondent.

V.S. *Appeal dismissed.*

Ismail, J.
2nd September, 1969.

Nara Naicker *v.* Special Tahsildar (Land Acquisition) Harijan Welfare, Pollachi, Coimbatore District.
W.P.No. 3057 of 1967.

Land Acquisition Act (I of 1894), section 4 (1)—Notification—Notice under, actually served on petitioner—Non-publication of the substance of the notification at convenient places in the locality—Effect—No mala fides alleged against the Government—Allegation against somebody else as responsible for acquisition—Not to affect validity of proceedings.

So long as a notice under section 4 (1) of the Act has actually been served on the petitioner, it cannot be said that the petitioner was prejudiced or hurt by the non-publication of the substance of the notification at convenient places in the locality as contemplated by section 4 (1).

If there are no *mala fides* on the part of the Government the fact that there was some *mala fides* or *malice* on the part of somebody else instigation acquisition proceedings does not really establish any *mala fides* so as to vitiate the acquisition proceedings. It is really the Government which ultimately applies its mind and decides upon acquiring the property.

N.R. Chandran, for Petitioner.

T. Satyadev, Assistant Government Pleader on behalf of the Respondents.

V.S. ——— *Petition dismissed.*

Veeraswami, Chief Justice and *Maharajan, J.*
13th September, 1969.

The National Chamber of Commerce *v.* State of Madras.
W.P.Nos. 490 of 1966, 448 of 1967 and 3083 to 3086 of 1967.

Madras General Sales Tax Act (*I of* 1959), *section* 2 (g)—Explanation—*Dealer—Distribution—Contemplates transfer of property—Registered Society—Importing goods and distributing to members holding actual user's licence—No property in the goods held by society—If a dealer—Liability to tax.*

The word distribution occurring in the explanation to the definition of "dealer" contemplates a transfer of property.

The petitioner, registered under the Societies Registration Act, 1860 imported goods and distributed them to its members who held the actual user's licence. The petitioner was evidently acting as a kind of agent or trustee for its members. It certainly had no property in the goods it imported, for the import was only in respect of the import entitlement of the members of the petitioner. Further when once the goods were imported under such entitlement they should be distributed to the respective members in accordance with the quota entitlement and the members to whom the distribution had been made should themselves use them. The real purchaser is the relative licensee who had the quota. The process of import and export therefore involved no transfer of property in the distribution.

M.S. Abdul Azeez, for Petitioner.

K. Venkataswami, Assistant Government Pleader on behalf of the Respondent.

V.S. ——— *Petition allowed.*

Alagiriswami, J.
27th October, 1969.

V.N. Paramasivan *v.* Secretary, Regional Transport Authority, Chengleput at Madras.
W.P.Nos. 2694 and 2695 of 1967.

Constitution of India (1950), *Article* 226—*Partition and allotment of buses to petitioner—Transfer of permits—Endorsement on the permit as on an anterior date, date of transfer of registry in the* C *certificate—No error of law or any breach of provisions of any law—Not liable to be quashed.*

In regard to two buses allotted to the petitioner under a family partition, the order of transfer was made on 11th April, 1967. The transfer of registry was entered in the *C* certificate on 29th June, 1967. The transfer of the permits was endorsed on 18th August, 1967, but it gave the date, 29th June, 1967, as the date of transfer. The writ petition was filed to quash the order of the Regional Transport Authority mentioning the date 29th June, 1967 as the date of transfer.

Held, though what the Regional Transport Authority did is not what normally happens, it cannot be said that he has committed any error of law or he has been guilty of any breach of any provision of law. The order is not liable to be quashed.

K. Gopalachari, for Petitioner.

K.S. Bakthavastalam, Assistant Government Pleader on behalf of Respondent.

V.S. ——— *Petition dismisse.*

Ismail, J.
3rd November, 1969.

The Management of Viduthalai *v.* J. Dravida Arasu.
W.P.No. 226 of 1969.

Madras Shops and Establishments Act (XXXVI of 1947), section 41 (1),—Dismissal of an employee on charge of misconduct—Enquiry to be conducted irrespective of admission of misconduct.

Whether the employee admits the misconduct or not, the employer must conduct an enquiry and evidence must be recorded at the enquiry to substantiate the misconduct on the basis of which the employer dispensed with the services of the employee. In the absence of such an enquiry, the order of dismissal would be invalid.

(*Venkateswara Bank Ltd., Salem* v. *Krishnan*, (1960) 2 M.L.J. 165, referred).

D. Raju for *S. Mohan*, for Petitioner.

R. Balasubramanian, for 1st Respondent.

T. Satyadev, the Assistant Government Pleader on behalf of 2nd Respondent.

V.S. —— *Petition dismissed.*

Alagiriswami, J.
5th November, 1969.

S. Krishnaswami Pillai *v.* Deputy Commissioner, Hindu Religious & Charitable Endowments (Administration) Department, Madurai.
W.P.No. 1307 of 1966.

Madras Hindu Religious and Charitable Endowments Act (XXII of 1959)—Endowments or Kattalais *in respect of incorporated and unincorporated Dewaswoms—Act applicable—Scheme—Application by trustees of a temple to Deputy Commissioner to frame a scheme in respect of a specific endowment—Other of endowments connected with—Power to frame scheme—Section 64—Pending settlement of scheme—Appointment of fit person.*

The Madras Hindu Religious and Charitable Endowments Act extends to the whole of the State of Madras including the Kanyakumari district and it applies to all Hindu Public Religious Institutions and Endowments except the incorporated dewaswoms and unincorporated dewaswoms. Endowments or *Kattalais* in respect of incorporated and unincorporated dewaswoms are also governed by the provisions of the Act.

When an application is made to the Deputy Commissioner by the general trustees of the temple in respect of a specific endowment relating to that temple, if the Deputy Commissioner came to know of the existence of the other endowments which are connected with that endowment, it was certainly open to him to frame a scheme under section 64 of the Act covering the whole of the religious endowments and charities.

Where the draft scheme is one to which the petitioner and three other trustees were parties, it is not proper to prohibit the Deputy Commissioner from proceeding with the further consideration of the scheme pending disposal of the petition filed by the petitioner under section 63 (3). The Deputy Commissioner can proceed to take action under section 64 (4).

V.S. Ramakrishnan, for Petitioner.

The Government Pleader, K. *S. Naidu* and *R. Vijayan*, for Respondent.

V.S. —— *Petition dismissed.*

Ramaprasada Rao and *Ramanujam, JJ.*
25th November, 1969.

Eastern Photo Studio and Eastern News Photo Service *v.* State of Madras.
W.P.Nos. 1753 of 1965 and 3014 of 1966.

Madras General Sales Tax Act (I of 1959), *section* 2 (n)—*Sale—Taking Photographs and sale by assessee, an artist and photographer—Element of sale involved—Exigibility to tax.*

The assessee, carrying on an avocation as camera artiste and photography, gather assignments from customers for the purpose of taking photographs. In the course of such an avocation it necessarily purchases photographic films, papers, chemicals, mounts, albums, etc. from other photographic dealers and make use of them in the course of its avocation. On the question whether any element of sale is involved in the transaction,

Held, the essence of the deal is a sale of a finished product and not a case where work and labour alone is involved. The trade involves the production of a marketable commodity, though it may be of interest to particular person concerned. A commercial activity is reflected in the entire process. When a customer approaches a photographer and wants him to take a photograph and pays for it, and the copies therefrom, no skill is involved and even if involved, it bears an infinitesimally small proportion to the totality of the bargain.

R. Desikan and *B. Soundarapandian*, for Petitioner.

K. Venkataswami, the Assistant Government Pleader on behalf of the Respondent.

V.S. *Petitions dismissed.*

Gokulakrishnan, J.
6th September, 1969.

S. Rangaraju *v.*
Sulochana Ammal.
S. A. No. 644 of 1965.

Registration Act (XVI of 1908), section 35 and 77—Deed signed by four persons—Execution proved as against one—No proof in regard to the rest—Registration allowable in regard to the one executant.

Under section 35 of the Registration Act, the Registering Officer can register a document in so far as it relates to that person whose execution has been proved though there are others whose signatures are contained in the document but whose signatures were not proved.

K. Gopalachari and *G. Krishnan*, for Appellant.

N. K. Ramaswamy and *S. Sundaram Ayyar*, for Respondent.

V.S. *Appeal dismissed.*

Ramamurti, J.
8th September, 1969.

Murugesa Muthu Pillai *v.*
Arumugathammal.
S.A. No. 1461 of 1964.

Hindu Law—Trust—Trust or charge—Deed of trust—Interpretation—Principles—Entire income, if to be spent on the charities—If the charity would exhaust the income or if a surplus would result—Provision as to the ultimate destination of surplus.

The question whether an endowment creates a trust or a charge on the properties depends upon the proper interpretation of the deed, if any. All the clauses of the deed will have to be read together and no clause should be read in isolation and detached from the rest of the deed The relevant considerations are:—(1) whether the charity is an expanding charity and whether the manager or the trustee who is to conduct the charity is enjoined to spend the entire income on the charity, (2) whether the charity would exhaust the entire income or whether there will be substantial surplus or margin left after meeting all the expenses and (3) the provisions as to the ultimate destination of the surplus. If reading the document as a whole it is clear that whatever remains, whether substantial or otherwise, after the charities are performed, it is not to form an accretion to the corpus but can be utilised and taken by the manager or the trustee as his own without any liability to render an account and with an obligation to hold it on behalf of the trust, the endowment will not be an outright dedication but a charge only is created in favour of the charity for the expenses.

R. Shanmugham, for Apellant.

V. Ratnam, for Respondent.

V.S. *Appeal dismissed.*
No leave.

Sadasivam and *K. N. Mudaliyar, JJ.*
10*th September*, 1969.

Gokhula *v.* Ramaswami Naicker.
A.S. No. 586 of 1963.

Interest Act (XXXII of 1839)*—Landlord and tenant—No agreement to pay interest on arrears of rent—No custom or usage also—Interest for the period before demand by lessor—Lessee not liable.*

Under a lease dated 22nd March, 1954 the lessee was in possession of the lease hold land for five years. The lessor had to file suits for the recovery of the arrears of rent. By notice dated 26th October, 1960 the lessor made a demand for interest on the arrears of rent due then. It was admitted that there was no agreement, express or implied to pay interest and that there was no usage or custom under which the lessee was bound to pay interest on arrears of rent. On the question whether the lessor would be entitled to interest on the arrears of rent for the period before the date of demand, under the Interest Act of 1839,

Held, the lessee is not liable to pay interest on the arrears of rent for a period before the date of demand, under section 1 of the Interest Act.

Case-law discussed.

N. P. Govindachari, for Appellant.

T. P. Gopalakrishnan and *R. Kanakasabai*, for Respondent.

V.S. *Appeal dismissed.*

Kailasam and *Venkataraman, JJ.*
11*th September*, 1969.

S. V. K. N. Palaniappa Chettiar *v.* V. R. P. L. M. Palaniappa Chettiar
A. A. O. No. 62 of 1965.

Civil Procedure Code (V of 1908)*, section* 73 (1) *proviso* (c)*—Distribution of assets—Sale of immoveable property in execution of decree ordering sale for discharging incumbrance—Sale proceeds—Surplus after discharge of incumbrance—To go towards discharge of monies due under a subsequent incumbarances in preference to claim of simple money creditor—Substituted security.*

The first mortgagee, having a mortgage over five items of properties, obtained a decree in the suit to which the subsequent mortgagee was also a party. The subsequent mortgagee also obtained a decree on his mortgage. The first mortgagee sold one item in execution, realised his amount, and the surplus was in deposit. The subsequent mortgagee in his decree, applied for sending for the amount and a cheque was issued to him. The appellant, a simple money decree-holder applied to the Court for directing the subsequent mortgagee to re-deposit the amount. On its dismissal,

Held, under section 73 (1), proviso (*c*) the subsequent mortgagee would be entitled to the amount in preference to the claim of the simple money decree-holder. Where the hypotheca is sold the security will fasten itself on the sale proceeds which were by way of substituted security.

K. S. Ramachandra Iyer and *R. Srinivasa Iyengar*, for Appellant.

V. Vedanthachari and *A. Venkatasan*, for Respondents.

V.S. *Appeal dismissed.*

Ramaprasada Rao, J.
12th September, 1969.

V. Balakrishnan *v.*
RM. A. N. Annamalai Chettiar.
A. A. O. No. 244 of 1966.

Madras Agriculturists' Relief Act (*IV of* 1938), *section* 9—*Extension of the Act to Pudukottai—Scaling down of debts incurred after* 1st *October*, 1932—*Interest at five per cent calculated upto the commencement of the Act—Means upto* 22*nd March*, 1938 *and not upto* 1st *January*, 1950 (*the date of extension of the Act to Pudukottai*).

Statute—Construction—Harmonious, construction—Exception.

In regard to the scaling down of the debts incurred on or after the 1st October, 1932 by an agriculturist debtor in Pudukottai after the Act was extended to Pudukottai on and from 1st January, 1950, the calculation of interest at the rate of five percent upto the commencement of the Act means upto 22nd March, 1938 and not 1st January, 1950. Any other construction would mean while the agriculturists in Madras State can under similar circumstances get relief in interest only upto 22nd March, 1938, agriculturists in Pudukottai State would be placed in a more jealous position and gain an undue advantage.

No doubt, the principle of harmonious construction which is the salutary principle in the matter of interpretation of statutes should always prevail but even that, has an exception if it is found by Courts that such an interpretation and rigid understanding might lead to inequality.

N. Srivatsamani, for Appellant.

K. Gopalachari and *G. Krishnan*, for first respondent.

V.S. *Appeal dismissed.*

Natesan, J.
12th September, 1969.

Thangammal v.
Murugammal.
S. A. No. 137 of 1965.

Presidency Small Cause Courts Act (*XV of* 1882), *section* 28—*Things attached to immoveable property—Removable by tenant—Deemed to be moveable property—Decree in Small Cause Court against tenant for ground rent—Sale of superstructure—Moveable property—Possession by auction purchaser—Claim to be within three years—Limitation Act* (*IX of* 1908), *Articles* 49, 181.

The superstructure in the possession of a tenant sold in execution of decree obtained in the Court of Small Causes against the tenant for the ground rent, under section 28 of the Presidency Small Cause Courts Act, is moveable property and the auction purchaser has title to the superstructure not as immoveable property but as moveable property. If possession is not taken within three years of the sale certificate, the claim would get barred by limitation.

Since such a superstructure is moveable property all questions arising in respect of them will be dealt with as relating to moveable property. If a claim is allowed in execution of the Small Cause Court decree, the party against whom the adverse order is passed has necessarily to file a claim suit in the Court of Small Causes.

S. Amudhachari, *A. V. Raghavan* and *S. Balasubramaniam*, for Appellants.

V. Ganapathisubramania Ayyar, for Respondents.

V.S. *Appeal dismissed.*

Sadasivam and *K. N. Mudaliar, JJ.* *17th September*, 1969.

State of Madras *v.* Ponnuru Venkatarathna Chetty. A. S. No. 603 of 1963.

Land Acquisition Act (I of 1894), *section* 23—*House and ground situate in a municipal town—Determination of market value—Reference to sales of adjacent lands—Capitalising the net annual income—Principles.*

House and ground measuring 1418 square feet and one ground 1785 square feet situate in George Town, Madras was acquired under the Act. The Land Acquisition Officer fixed the market value of the property by capitalising the annual income of Rs. 2,692-90 by 14 times. In the reference the City Civil Judge arrived at the market value by multiplying the net annual income by the number yielded by dividing 100 by the rate of interest current at the time of the notification on giltedged securities. He fixed 20 year's purchase. On appeal,

Held, the valuation fixed by the civil Court in reference cannot be termed excessive. The parties have given conflicting evidence as to how long the building on the acquired property would have normally continued to exist but for its demolition for making the property fit for a playground. It is clear from the award of the Land Acquisition Officer as well as the finding of the lower Court that the building which stood on the acquired property was 40 years old, on the date of section 4 (1) notification. It Could not be said that the lower Court erred in taking 20 years' purchase on the basis of the annual income.

The mode of determining the market value, by reference to sales and capitalising the annual income, discussed.

The Additional Government Pleader, and *R. G. Rajan*, for Appellant.

H. Devadoss P. Seshayya, P. Raghavayya and *M. A. Srinivasan*, for Respondent.

V.S. *Appeal dismissed.*

Natesan, J. *30th September*, 1969.

Ponniah Pillai *alias* Sivan Pillai *v.* G. Sethu Pillai. S. A. No. 1456 of 1964.

Madras Hindu (Bigamy Prevention and Divorce) Act (VI of 1949), *section* 4—*Second marriage within six months of order granting divorce under the Act*—Null *and* void.

Hindu Succession Act (XXX of 1956), *section* 15 (1) (c), 8 *and Group IV, Class II of Schedule—Property obtained by female from father under a will and property inherited from sister—Death issueless and intestate in* 1957—*Father's heirs—Father's eldest brother's son—Heir entitled to the properties—Grandchildren not within the class—Device and inheritance—Distinction.*

K got properties under a will left by her father and inherited certain other properties from her sister. *K* had taken a second husband within six months of the order granting her divorce under the Madras Hindu (Bigamy Prevention and Divorce) Act (VI of 1949). *K*, died issueless and intestate in 1957. *K's* father's eldest brother's son as the heir, sold the properties to the plaintiff who claimed the properties against the purchaser from the second husband of *K*.

Held, the plaintiff is entitled to recover the properties.

Under the Act of 1949 the second marriage contracted within six months of the order granting divorce is *null* and *void*.

K's father's elder brother's son would be the heir entitled to the properties of *K*, under section 15 (1) read with section 8 and Group IV Class II of Schedule.

Group IV Class II takes in only brother's son, sister's son, brother's daughter and sister's daughter. Grandchildren of a brother do not come in at all under Class II.

The words 'device' and 'inheritance' are distinct expressions in law. That the Hindu Succession Act bears this distinction when using the expressions is apparent from the use of the two words as distinct modes of acquisition of property, in the *Explanation* to section 14 of the Act.

As section 15 (2) relates to properties inherited from father or mother, it has no application to the present case.

Case-law discussed.

V. Ratnam, for Appellant.

V. Shanmugham, for Respondent.

V.S. *Appeal allowed.*

Ismail, J.
1st October, 1969.

V. Genga Naicker *v.*
K. Palani Gounder.
W. P. No. 3960 of 1967.

Madras Hereditary Village Offices Act (III of 1895), section 23—Appointment of village headman—Appointment of petitioner by the District Revenue Officer in appeal—Appeal to the Board of Revenue—Appeal competent under Board Standing Order 156 (3)—Show-cause notice issued to petitioner who asked for a personal hearing—Appeal allowed by Board without giving a personal hearing to petitioner appointing respondent—Order of Board—Not liable to be set aside—Writ.

The District Revenue Officer, in appeal set aside the orders of the Sub-Collector and appointed the petitioner as the headman of the village. In the appeal filed by the respondent, the Board of Revenue, set aside the orders of the District Revenue Officer and appointed the first respondent as the headman. Hence the writ,

Held, an appeal to the Board of Revenue against the orders of the District Revenue Officer is competent under Boards Standing Orders, 156 (3). So long as the Board of Revenue has the jurisdiction to entertain and dispose of the appeal it is immaterial whether it purports to exercise the power under section 23 of the Act or under Boards Standing Orders 156 (3). Consequently the conclusion of the Board of Revenue that the appeal to it was competent does not call for any interference.

On the merits the appointment of the respondent as the headman was held to be justified.

In the disposal of the appeal, the Board of Revenue sent a show-cause notice to the petitioner why the order of the District Revenue Officer should not be reversed and the petitioner sent an *Explanation* putting forward his superior qualifications and asked for a personal hearing. But the Board did not give him a personal hearing.

Held, there was no authority compelling the Board to give a personal hearing to a person like the petitioner.

S. Ramalingam, for Petitioner.

K. Ramaswami and *Mrs. A. Sarojini Bai*, for 1st Respondent.

T. Satyadev, Assistant Government Pleader on behalf of Respondents 2 to 4.

V.S. *Petition dismissed.*

Natesan J.
10th October, 1969.

Nagammal *v.* Nanjammal.
S.A. No. 1171 of 1965.

Hindu Succession Act (*XXX of* 1956), *section* 22—*Preferential right to acquire property—Inheritance by heirs in Class I of Schedule to the Act—Co-heirs—Preferential right of co-heir to acquire interest of a heir proposed to be transferred—Transfer in derogation of the right of other co-heirs—Voidable at the instance of co-heirs—Waiver of right—Onus on purchaser.*

The right of a person to transfer his interest in property inherited along with other Class I, heirs is subject to the preferential right of his co-heirs to take the transfer and any transfer in derogation of that right would be voidable at the instance of co-heirs who are denied their preferential right.

To infer waiver of right, there must be knowledge and an opportunity to exercise the option.

There can be no claim of *bona fides* and want of notice by the purchaser, as the right conferred is statutory and the purchase is of the share of the co-heir shortly after the inheritance opened.

The burden is upon the purchaser to establish that the other co-heirs waived their preferential right when occasion arose.

K. Sarvabhauman and *T. R. Mani*, for Appellant.

T. Srinivasan, for Respondent.

V.S.

Appeal allowed, no leave.

Ismail, J.
14th October, 1969.

A. Muthuswami Pillai *v.*
Commissioner, Hindu Religious and Charitable Endowments.
W.P.No. 3494 of 1967.

Madras Hindu Religious and Charitable Endowments Act (*XXII of* 1959), *section* 45 (4)—*Executive Officer—Removal or dismissal—Only by way of disciplinary or punitive action—Endowment—Disputes—Appointment of Executive Officer by Commissioner—Subsequent order of Deputy Commissioner modifying the scheme—Consequent application for removal of Executive Officer, under section* 45 (4)—*Not sustainable—Resort to other provisions, open to petitioner.*

On an application made by persons interested in an endowment, the Deputy Commissioner modified an original scheme. But by that time the Commissioner had appointed an Executive Officer for the endowment. The petitioner filed an application to the Commissioner under section 45 (4) for removing the Executive Officer in view of the modification effected by the orders of the Deputy Commissioner. The application was dismissed. Hence the writ.

Held, the power to suspend, remove or dismiss an Executive Officer confered and contemplated by section 45 (4) is one to do so by way of punitive action or disciplinary action against the Executive Officer. The power to revoke or cancel an earlier order appointing an Executive Officer, which will result in the removal of the Executive Officer is not one contemplated by section 45 (4) of the Act. It would be open to the petitioner to apply to the Commissioner under section 23 or any other provision of the Act. The order made by the Commissioner relying on section 45 (4) is correct and has to be upheld.

M. R. Narayanaswamy, for Petitioner.

T. Satyadev, Assistant Government Pleader for respondent No. 1.

V.S.

Petition dismissed.

Ramaprasada Rao, J.
6th November, 1969.

K. Rajabushanam *v.* C. V. Masilamani Mudaliar.
C.R.P. No. 354 of 1968.

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 14 (1) *and Transfer of Property Act (IV of* 1882), *section* 106—*Notice determining the tenancy—Tenancy commencing from* 17*th of a month to* 16*th of next month—Contract to the contrary—Notice not signed—Validity—Eviction petition—Requirement for demolition and reconstruction—Petition to revise the decision of the appellate authority—Question of vires of provision in the local Act—Jurisdiction.*

The notice determining the tenancy is valid.

Where the month of tenancy agreed to between the landlord and tenant was not the English calendar month but one commencing from the 17th of each calendar month and ending with 16th of the next month, there is a contract to the contrary, under section 106 of the Transfer of Property Act.

The tenant has not taken the objection in the earlier stages, that by reason of the non-signing of the notice determining the tenancy, any prejudice has been caused to him. If the lessee has not suffered any prejudice, then section 106 of the Transfer of Property Act ought to be liberally construed and notice of termination of tenancy ought to be interpreted equally liberally.

Hence the notice terminating the tenancy on 10th December, 1966, calling upon the tenant to vacate and surrender possession by the end of 16th January, 1967 is valid.

It is beyond the purview of the enquiry under section 25 of the Rent Control Act to go into the question of the vires of section 14 (1) of the Act.

G. N. Chari for Petitioner.

G. Natarajan for Respondent.

V.S.

Petition dismissed.

Ramprasada Rao, J.
7th November, 1969.

Soundarapandian *v.* A.R. Meenakshi Achi.
C.R.P. No. 866 of 1967.

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960) *and Transfer of Property Act (IV of* 1882), *section* 106—*Eviction proceedings—Notice terminating tenancy—Absence of notice—No jurisdiction to determine rights of parties—Question of absence of notice—Not raised or belatedly raised—Not relevant.*

If proceedings under the Rent Control Act are not preceded by a notice of determination of tenancy under section 106 of the Transfer of Property Act, then such proceedings are deemed to be irrgular and Tribunals hearing such proceedings do not have the requisite jurisdiction to adjudicate upon them. The question as to the validity or irregularity of notice of determination of tenancy having been raised, belatedly or not having been raised at all, is not relevant.

P. R. Narasimhachari, and *A. Sundaram,* for Petitioner.

S. Somasundaram, for Respondent.

V.S.

Petition allowed.

Ramanujam, J.
13*th November*, 1969.

The Self Respect Sangam, Erode, by President, E. V. Ramaswami Naicker *v.* Nagammal.
S.A. No. 1636 of 1965.

Co-sharers—Sale of property among the sharers apart from the provisions of the Partition Act (IV of 1893)—*Inherent jurisdiction of Court exists.*

Civil Rules of Practice, Rules 188, 199—*Sale beyond the prescribed hour—Upset price fixed by Commissioner—Sale invalid.*

It is well-settled that the Court has the inherent jurisdiction to direct a sale of the properties among the co-sharers apart from the provisions of the Partition Act.

Where a sale of the property was conducted beyond the hour fixed under rule 188 of the Civil Rules of Practice, on the basis of an upset price fixed by the Commissioner (while rule 199 requires the Court to fix the upset price), the sale cannot be said to be valid and the same has to be set aside.

S. Mohan, for Appellant.

P. S. Srisailam, for Respondent.

V.S. *Ordered accordingly.*

Ramaprasada Rao, J.
14th November, 1969.

G. Radhakrishnan *v.*
C.G. Ambujammal.
C.R.P. No. 1964 of 1965.

Madras Buildings (Lease and Rent Control) Act (*XVIII of* 1960), *section* 10 (3) (a) (*i*) *and* 10 (3) (c) *and Transfer of Property Act* (*IV of* 1882), *section* 106—*Notice determining tenancy calling upon tenant to vacate and deliver possession before the end of the month—Validity—Landlady residing in a portion of the house—One of her sons also residing in a room in the same house—Another son residing in a rented house—Petition for eviction under section* 10 (3) (a) (*i*) *requiring the portion for the son of the landlady—Petition maintainable—Two provisions open to landlady—One under section* 10 (3) (a) (*i*) *and another under section* 10 (3) (c) *—Open to landlady to resort to either.*

The landlady was residing in a portion of the premises and one of her sons was also residing in a room in the same premises while another son was residing in a rented house. The notice determining the tenancy of the petitioner issued on 2nd December, 1963, called upon him to make arrangements to vacate and deliver possession of the portion in the occupation of the tenant " before the end of the month ". It is common ground that the month of tenancy is in accordance with the English calendar month. The eviction petition was filed under section 10 (3) (*a*) (i) of the Act.

Held, the notice determining the tenancy was valid and the petition filed under section 10 (3) (*a*) (i) is also sustainable.

the notice which required the tenant to vacate the accommodation before the end of the month enabled the tenant to remain in the premises till the midnight of 31st December, 1963, and if it did enable him to do so, then the statutory prescription in section 106 of the Transfer of Property Act, that the notice of determination of tenancy should expire with the end of the month of tenancy is literally satisfied.

A tenant cannot put forward an objection purely based on hypothetical and hypertechnical grounds to avoid a suit in ejectment and oppose its maintainability.

If there are two provisions in the same statute which could be availed of by a litigant to secure redress, then natural justice requires that the two provision should be interpreted as alternative remedies available to him, the choice being vested in him to seek relief under one or the other of such provisions.

As the first son is residing with the landlady, it looks as if the landlady ought to have filed the application under section 10 (3) (*c*) on the basis of requiring additional accommodation. But as her second son is not residing with her, she has got the right to approach the Rent Controller under section 10 (3) (*a*) (i). The two remedies were, therefore, available statutorily to the landlady. There could therefore no objection to her application under section 10 (3) (*a*) (i).

C. S. Sundararaja Ayyangar, and *N. Sivamani*, for Petitioner.

M. D. Lakshminarasimham, for Respondent.

V.S. *Petition dismissed.*

Sadasivam and *K.N. Mudaliar, JJ.* *5th November*, 1969.

Muthulakshmi *v.* Mottaiandi Chettiar. Appl. No. 611 of 1963.

Hindu Adoptions and Maintenance Act (*LXXVIII of* 1956), *section* 20—*Unmarried daughter—Unable to maintain herself out of her own earnings or property—Obligation of the father to maintain—Period not restricted to her attaining majority.*

Under section 20 of the Act, there is an obligation by a person to maintain his daughter who is unmarried so long as she is unable to maintain herself out of her own earnings or property. Under the Hindu Law a father is bound to maintain his unmarried daughter irrespective of the fact whether she has attained majority or not. It is only on marriage a daughter ceases to be a member of the father's family and becomes a member of her husband's family and loses her right to be maintained by her father. It is this right which is preserved in section 20 (3) of the Act but with the added qualification that the unmarried daughter is unable to maintain herself out of her own earnings and property. The Court will not be justified in a case falling under section 20 to restrict the maintenance payable to an unmarried daughter upto the date of her attaining majority.

P. Muthukumaraswamy Mudaliar and *P. Venkatachalapathy*, for Appellant.

V. Narayanaswami, for Respondent.

V.S.

Ordered accordingly.

Ramaprasad Rao, J. *14th November*, 1969.

Samipatha Naidu *v.* G. Ramakrishnan. C.R.P. No. 12 of 1968.

Madras Cultivating Tenants Protection Act (*XXV of* 1955), *section* 3 (2) (b)—*Removal of earth from cultivable lands by tenant—Injurious to land—Liable for eviction.*

Under section 3 (2) (*b*) removing earth by digging to an extent of 30′ to 40′ from cultivable lands is an act which is injurious to it and which would considerably decrease or interfere with the fertility of the lands. The tenant would be liable to eviction on that ground.

S. Nainarsundaram and *V. Natarajan*, for Petitioners.

C. Chinnaswamy and *K.P. Sivasubramaniam*, for Respondent.

V.S.

Petition allowed.

Sadasivam and *K.N. Mudaliar, JJ.* *19th November*, 1969.

Vengattaramayer *v.* Soundaravelly *alias* Tayarammallee. Spl. A. (Civ.) No. 299 of 1966 (P.)

French Code Civil, Articles 1716, 1763 *and* 1764—*Suit for arrears of rent—Case of oral lease for fixed rent—Absence of receipt for rent—Defence, lease on waram basis—Defence not considered—Suit decreed on the basis of Article* 1716—*Not sustainable—Remand.*

The Courts below have proceeded to apply Article 1716 of the Code Civil on the assumption that the lease in this case is an oral lease for a fixed rent where no receipt for rent has been produced. They cannot make any such assumption without negativing the claim of the appellant that it is a waram lease or even considering the said claim. It is true that if the lease is an oral lease for a fixed rent and there is no receipt evidencing payment of rent, the Courts below would be justified in invoking Article 1716 of the Code Civil. But as the vital question for invoking Article 1716 of the Code Civil has not been considered by the Courts below it is necessary to remand the matter to the Court of first instance, to decide whether the oral lease in this case is for a fixed rent or on waram basis. There are separate provisions like Articles 1763, 1764 etc. for waram leases.

A. Balapajanar, E.R. Venkataraman and *J. Stanislas*, for Appellant.

N. Arunachalam, for Respondent.

V.S.

Remanded.

Alagiriswami, J.
2nd December, 1969.

K. Baby Sarojam *v.*
State of Madras.
W.P.No. 984 of 1968.

Madras Educational Rules—Not statutory rules—Petitioner, holder of a Tamil Vidwan title of Kerala University, employed in a private institution—Recognition under Madras University—Writ, not sustainable.

The petitioner is a S.S.L.C. holder of the former Travancore-Cochin State and of the Tamil Vidwan title of the Kerala University and has undergone the Pandit training of the Madras Government. The Government of Madras informed her, on her representation, that the Vidwan Title of the Kerala University has not been recognised as equivalent to the Vidwan title of the Madras University and it was left to the management to replace her from the post of Tamil pandit and therefore declined to interfere. Hence the writ.

Held, the petitioner is employed in a private educational institution. The Madras Educational Rules are not statutory rules and all that the Government has done by its communication is to refuse to interfere. A writ of *certiorari* will not serve the purpose and a writ of *mandamus* cannot issue because it cannot be said that the Madras Government have a duty to interfere.

The contention of the petitioner is other wise well founded, because the Kerala University is recognized by the University Grants Commission as well as the Government of Madras, for the purpose of recruiting personnel to its services and the Kerala University should therefore, be deemed to be a recognized university even for the purpose of rule 13 of the Madras Educational Rules.

K. Parasaran and *M. Soundarapandian*, for Petitioner.

K.S. Bakthavathsalam, Assistant Government Pleader, for Respondents.

V.S. *Petition dismissed.*

Ismail, J.
9th December, 1969.

V.Ranganathan *v.*
Life Insurance Corpn. of India.
W.P.No. 1515 of 1968.

Life Insurance Corporation Act (XXXI of 1956), *section* 49 *and (Staff) Regulations, Regulation* 30 (2) *and* 69 (4)*—Participation in a strike by employee—Absence treated as extraordinary leave on loss of pay—Consequent postponement of increment by one month—Absence, if due to circumstances beyond the control of employee—Satisfaction of competent authority after obtaining explanation if employee, necessary —Absence vitiates order.*

The principal provision in regulation 32 lays down that when an employee absents himself from duty without leave, he shall not ordinarily be entitled to draw any pay and allowances during such absence and shall further be liable to such disciplinary measures as the competent authority may impose. This provision does not talk of any extraordinary leave or any other leave. It is only the proviso which enables the competent authority to treat the period of absence as period spent on privilege, sick, special or extraordinary leave. Before an order is passed under this proviso, the competent authority must be satisfied that the overstayal or absence of leave was due to circumstances beyond the control of the employee. The proviso also states that this satisfaction must be arrived at after obtaining an explanation in writing from the concerned employee. In the absence of such satisfaction, the competent authority would have no jurisdiction to act under the proviso and pass the impugned order.

S. Ramaswami, for *G. Desappan* and *R. Ganesan*, for Petitioner.

S.K.L. Ratan, for Respondent.

V.S. *Petition allowed.*

Chief Justice and *Somasundaram, JJ.* 10*th December*, 1969.

The Principal, Medical College Pondicherry *v.* M.J. Vincent. W. Ps. 103 and 311 of 1965 (P).

Constitution of India (1950), *Articles* 226 *and* 311 *and Pondicherry Administration Act* (*XLIX of* 1962), *section* 9—*Order of termination of services of a civil servant in Pondicherry passed before* de jure *merger and before extension of jurisdiction of High Court—No jurisdiction to quash order.*

Article 226 of the Constitution, though remedial and procedural in character, would not vest in the High Court of Madras, jurisdiction, to quash an order made in Pondicherry in respect of a civil servant there before the *de jure* merger and also before the coming into force, on 6th November, 1962, of section 9 of the Pondicherry Administration Act, 1962. Since the jurisdiction of the High Court was extended only by section 9 of the Act, it could not be applied retrospectively that is to say, in such a manner as to reach administrative or quasi judicial orders which were passed before the coming into force of the Act.

Habibullah Sahib, Standing Counsel for Central Government on behalf of the Appellant.

N.G.R. Prasad, for Respondent.

V.S. ——— *Appeal allowed.*

Alagiriswami, J. 16*th December*, 1969.

P.R. Srinivasan *v.* State of Madras. W.P.No. 988 of 1968.

Land Acquisition Act (*I of* 1894), *section* 18—*Person interested—Person purchasing the property* (*under acquisition*) *after the award enquiry but before the passing of the award—Person entitled to ask for a reference to Court—Letter addressed to the Collector—If an application requesting reference.*

A person, purchasing the land (under acquisition) after the award enquiry was over but before the award was passed, would be a person interested as defined in section 3 of the Act, entitled to ask for a reference under section 18 of the Act.

A letter sent to the Collector stating that the compensation awarded for the land is low and there cannot be any reason for a lesser compensation for that land compared to another land acquired nearby, that the value arrived at for working out compensation is highly discriminatory and praying for fixation of compensation at the rates applicable to comparable lands nearby, would be deemed to be an application requesting reference, within the scope of section 18 of the Act.

N. Varadarajan and *R.V. Seshadri*, for Petitioner.

K.S. Bakthavathsalam, Assistant Government Pleader, on behalf of Respondent.

V.S. ——— *Petition allowed.*

Ismail, J. 16*th December*, 1969.

K.S. Sundaresan *v.* Joint-Registrar of Co-operative Societies. W.P.No. 1644 of 1968.

Madras Co-operative Societies Act (*LIII of* 1961), *sections* 85 *and* 96—*Winding up of a Society—Opportunity to make representation to Society—Absence of such opportunity—Aggrieved party, the Society—Member of the Society—Not entitled to challenge the order—Order under section* 85, *appealable—Alternative remedy—Writ—Constitution of India* (1950), *Article* 226.

Under section 85 of the Act, before passing an order for winding up a Society, an opportunity for making representation has to be given to the Society. A member of the Society, cannot be said to be aggrieved by a refusal of an opportunity provided under section 85. Section 96 of the Act also provides for an appeal against the order made under section 85.

M. Krishnappa, K.K. Venugopal, for Petitioner.

T. Satya dev, the Assistant Government Pleader on behalf of Respondent.

V.S. ——— *Petition dismissed.*

Gokulakrishnan, J.
18*th December*, 1969

Kumaravel Pillai *v.*
S. Ganapathi.
A.A.O.No. 80 of 1969.

Indian Lunacy Act (*IV of* 1912), *sections* 60,80 *and* 82—*Death of lunatic—Properties of lunatic—Direction by Court to manager and guardian of deceased lunatic to hand over properties to the proper person concerned—Application—Jurisdiction.*

The Court has jurisdiction and power to pass appropraite orders directing the manager and guardian of the deceased lunatic to hand over the property of the lunatic to the proper person concerned, in appropriate circumstances, in an application filed under the Act.

K. Sarvabhauman, for Appellant.

P. Sivaramakrishniah and *S. Pichai*, for Respondent No. 1.

V.S. *Appeal dismissed.*

T. Ramaprasada Rao, J.
16*th January*, 1970.

Sadagopa Alwar *v.*
Elumalai Chetty.
C.R.P.No. 335 of 1967.

Madras Buildings (Lease and Rent Control) Act (*XVIII of* 1960), *section* 10 (2) (vii)—*Transfer of Property Act* (*IV of* 1882), *section* 106—*Eviction of tenant under Madras Act XVIII of* 1960 *on the ground that the tenant had wilfully denied the title of the landlord—Notice under section* 106 *of T.P. Act if necessary.*

It is by now well settled that the provisions of the Rent Control Act do not in any way interfere and much less abrogate any of the provisions of the Common law and particularly those contained in the Transfer of Property Act. One such provision in the T.P. Act is that in case a tenant raises an irresponsible defence such as denial of title of the landlord to the property in question then there is an automatic snapping of the relationship of landlord and tenant. In such a case where the tenant is sought to be evicted under the Rent Control Act, the question of determination of tenancy under section 106 of the T.P. Act does not arise.

Where, therefore, a tenant has denied the title of the landlord or claimed a permanent tenancy and if such denial or claim was ultimately established to be not *bona fide*, then notwithstanding the absence of notice under section 106 of the Transfer of Property Act, a petition for eviction under section 10 (2) (*vii*) of the Madras Rent Control Act, 1960, is maintainable and the Rent Controller would have power to entertain and deal with it.

S.V. Rama Iyengar, S. R. Chandran and *M.A. Kirmani*, for Petitioners.

V. Tyagarajan and *R. Thirumalaiswami Naidu*, for Respondents.

V.K. *Petition dismissed.*

Natesan, J.
24th July, 1969.

Rasu Thinnapriyar *v.*
Nagendra Iyer.
S.A.No. 1238 of 1965.

Civil Procedure Code (V of 1908), *Order* 34, *Order* 21, *rule* 2 *and Order* 23, *rule* 3—*Scope—Mortgage suit—Preliminary decree—Before deposit by mortgagors, hypthsca sold in pursuance of a money decree obtained against the mortgagors—Payment of mortgage dues by auction purchaser—Satisfaction recorded by mortgagee and possession delivered to auction purchaser—Application for final decree by mortgagors on deposit—Maintainable—Entering satisfaction or adjustment by mortgagee with persons not parties to mortgage suit—Not to affect mortgagor's rights to possession and delivery of title deeds.*

Before any money was deposited by the mortgagors under a preliminary decree in a mortgage action, the son of the deceased mortgagee obtained a money decree against the mortgagor and in execution proceedings the mortgaged property was sold. The auction purchaser paid the amounts due to the mortgagee since he has purchased the property subject to the mortgage, obtained form the mortgagees a receipt that the mortgage had been fully satisfied and possession was delivered outside Court to the auction purchaser. Subsequently the mortgagors deposited the sums in pursuance of the preliminary decree and applied for a final decree for return of the deeds and possession. The lower appellate Court held that the application was not maintainable. Hence the second appeal.

Held, the application filed by the mortgagors for passing a final decree is maintainable.

In a mortgage suit, on default of payment by a mortgagor-judgment debtor, the mortgagee may get a final decree for foreclosure, or sale as the character of the mortgage may warrant. The mortgagor defendant in the suit may also on deposit, get a final decree in his favour for the return of the documents of title, and delivery of possession of the property. A mortgagee cannot by a simple expedient of accepting the mortgage money (may be in collusion) from a person not a party to the mortgage suit and delivering possession to him, enter up satisfaction of the mortgage decree and defeat the judgment-debtor of his rights. The decree-holder cannot in a case like this claim to have satisfaction recorded either Order 21, rule 2 or under Order 23 rule 3, Civil Procedure Code, when the adjustment is not with the parties to the suit.

M. Ramachandran, for Appellant.

K. Raman, for Respondent.

V.S.

Appeal allowed.

Ramaprasada Rao, J.
29th September, 1969.

Nataraja Pillai *v.*
Thanammal.
A.A.A.O. No. 87 of 1965.

Civil Procedure Code (V of 1908), *Order* 21, *rule* 89—*Setting aside execution sale—Deposit by judgment debtor—Sum specified in the proclamation—Deposit less sums bid by decree-holder in regard to certain items—Rest a valid deposit—Strict compliance with rule necessary.*

In execution of the mortgage decree in respect of five items of properties, the first three items were sold for a sum of Rs. 705 and the other two items were sold for Rs. 660 and Rs. 1,000 respectively and these two items were purchased by the decree-holder himself with the leave of the Court. The proclamation of sale disclosed that a sum of Rs. 1594-75 was payable under the decree. The judgment-debtor filed an application under Order 21, rule 89 for setting aside the sale of the first three items of properties and for that purpose he deposited the sale amounts which represented the bids for items 1 to 3 as also 5 per cent. over such totality of the bids for the three items towards commission and in addition deposited the poundage, etc., payable by him.

Held, the strict provisions of Order 21, rule 89 have not been complied with since the amount specified in the proclamation has not been deposited by the judgment-debtor. Such a deposit may be less any amount which may, since the date of the proclamation of sale, have been received by the decree-holder. It would not contemplate a case where the decree-holder himself purchased some of the items of properties in execution sale. A notional satisfaction of the decree is not contemplated under the rule.

V. Ganapathi Subramania Iyer, P. Anantakrishnan Nair, and *N. Thiagarajan,* for Appellant.

C. S. Swaminathan, for Respondent.

V.S. ——— *Appeal dismissed.*

Alagiriswami, J.
4th November, 1969.

S. Meyyanatha Pillai *v.*
State of Madras.
W.P. No. 4875 of 1965.

Board Standing Order, 156-*A—Village headman—Disciplinary action—Order of removal from service—District Revenue Officer, in appeal, reducing the punishment to suspension for two years — Board of Revenue—Enhancing the punishment to removal from service—Power to modify.*

Under the Board Standing Order, 156-A, the power to modify includes the power to enhance the punishment imposed by the subordinate authority.

R. S. Venkatachari, for Petitioner.

K.S. Bakthavathsalam, Assistant GovernmentPleader on behalf of the Respondents.

V.S. ——— *Petition dismissed.*

Ramaprasada Rao and
Ramanujam, JJ.
9th December, 1969.

P.K. Saraswathi Ammal *v.*
Revenue Divisional Officer, Tiruchirapalli.
A.No. 322 of 1964.

Land Acquisition Act (*I of* 1894), *sections* 9, 10 *and* 25—*Failure or omission to make a claim to compensation—Consequences—Penal provision results where notice under section* 9 *is effectively served—Condoning omission—Written application, if necessary.*

Section 25 (2) and (3) are very stringent and the failure to make a claim to compensation affects the question of the compensation. The ' penalty ' postulated in the sub-sections becomes operative and enforceable only if a notice under section 9 of the Act has been effectively served.

It is settled that no written application as such is necessary to prompt the Court to condone the omission even if any, on the part of the claimant who has been duly served with a notice.

M.R. Narayanaswami, for Appellant.

The Additional Government Pleader, and *T.N.C. Rangarajan*, for Respondents.

V.S. ———

Ismail, J.
7th January, 1970.

Kolanda Goundar *v.*
State of Madras.
W.P. No. 3056 of 1968.

Land Acquisition Act (*I of* 1894), *section* 5-*A and* 17 (4)—*Dispensing with the enquiry and invoking urgency provisions—Application to a case of real urgency—Pendency of proceedings for a long time.*

Section 5-A of the Act confers a valuable right on the owner to object to the acquisition of his land and that right can be taken away only in cases of real urgency, when the Government after applying its mind to the question, comes to a conclusion that the case was one which could not brook any delay.

In this case there is absolutely nothing on record to show that the matter which was proceeding in a leisurely fashion from 1964 to 1966 became suddenly urgent

in September, 1966 so as to warrant the invocation of the urgency provisions. Between the Collector's report and the order of the Government, there had been more than four months' time and there had been more than one correspondence between the Government and the Collector before ultimately the Government passed the orders in question. Certainly an enquiry under section 5-A could have been conducted during this intervel. Hence the urgency provisions have not been invoked after complying with the requirements of the law. The declaration under section 6 (1) has to be quashed.

K. Doraiswami, for the Petitioner.

T. Satyadev, Assistant Government Pleader on behalf of Respondents.

V.S. ——— *Petition allowed.*

Ramaprasada Rao and *Ramanujam, JJ.*
9th January, 1970.

E. K. Raghava Reddiar *v.* Collector of Madras.
A. Nos. 297 of 1965, 328 to 333 of 1965. and A.No. 73 of 1966.

Land Acquisition Act (I of 1894), section 23—Acquisition for an industrial estate in expansion—Prior acquisition proceedings for the estate—Potential value as house sites—Severance compensation—Plot of land left out of acquisition—Fit for construction—Accessability available—Not entitled to severance compensation.

The lands (notified to be acquired under section 4 in 1961) are situate in a developed residential locality and all the plots have ingress and egress to them. Since 1957 there was a scheme for acquiring lands in the vicinity and in the surrounding area of the acquired lands for the purpose of establishing an industrial estate. The acquisition in the instant case is for the expansion of such an industrial estate. This aspect of the external development of the surrounding lands does have an impact on the market value of the acquired lands, as potential house sites. The acquired lands are not very far from the city limits and they have the benefit of electricity and water. The Land Acquisition Officer awarded Rs. 300 per ground and in reference it was increased to Rs. 550 per ground. The High Court fixed it at Rs. 650 per ground.

Severance compensation, under section 23 of the Act, is special in nature, and has to be set out precisely by the claimant.

A plot of land measuring about 150 feet by 30 feet severed from the surrounding acquired lands in the midst of the residential area, having the access, cannot be said to be entitled to severance compensation.

V.N. Srinivasa Rao, R. Janaradhana Rao and *P. Kothandaraman*, for Appellants.

The Additional Government Pleader, *S.T. Ramalingam*, and *M. Chenniappan*, for Respondent.

V.S. ——— *Orders accordingly.*

Kailasam, J.
13th January, 1970.

Shammi Unnissa Begum *v.* Harishankar.
C.R.P.No. 442 of 1968.

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), section 10 (7)—Second application for eviction on the ground of wilful default in payment of rent—Maintainable, if based on a fresh cause of action, default for a subsequent period—Notice determining tenancy—Filing in the proceedings—Immaterial whether the Landlord or the tenant produces—Pendency of two applications—Rejection of one—Continuance of tenancy—Scope.

A second application for eviction for wilful default in the payment of rent, is maintainable, provided it is on a fresh cause of action, that is, on the ground of wilful default for a subsequent period.

It would make no difference whether the notice determining the tenancy given under sections 106 and 111 (*h*) of the Transfer of Property Act, had been filed by the landlord or by the tenant in the course of the proceedings.

Section 10 (7) is specifically stated to be subject to the provisions of the Act and the landlord's right to ask for termination of the tenancy on fresh grounds under sub-sections (2) and (3) is not barred. The effect of sub-section (7) of section 10 would be, in the absence of any other proceedings having been taken under the Act according to the provisions thereof, the tenancy shall be deemed in law to continue on the same terms and conditions. This would not bar the landlord from filing a fresh petition for eviction on any ground that may arise after the filing of the previous application for eviction.

R. Thirumalaisami Naidu, for Peitioner.

A.S. Raman, for Respondent.

V.S. ——— *Petition dismissed.*

Ramakrishnan and *Ramanujam, JJ.*
2nd February, 1970

N.K. Sheriff Rowther *v.* N.E. Hameed.
S.C.P.No. 459 of 1969.

Constitution of India (1950), *Article* 133 (1)—*Judgment of High Court holding suit not barred by limitation and plaintiffs require no fresh sanction from wakf Board—Existence of other issues to be determined in the trial—Judgment not a final one—Leave to appeal to Supreme Court—Not to be granted.*

The trial Court had dismissed the suit on two preliminary grounds: (1) that the suit was barred by limitation since it was brought more than one year after the notification under section 5 of the Wakfs Act and (2) that plaintiffs 2 to 5 cannot continue the suit without obtaining a fresh sanction from the Wakf Board. On appeal the High Court held that the suit is neither barred by limitation nor is it defective for want of fresh sanction and that the suit still remained to be disposed of on merits by the Trial Court. It was further pointed out that the question whether the property constituted a wakf as defined in the Act was never in dispute between the parties. Since the order did not put an end to all the points that were in dispute between the parties, it is not a final judgment as contemplated by Article 133 (1) hence leave to appeal cannot be granted.

V. Thyagarajan, for *S. Sitarama Iyer, S. Rajarama Iyer* and *V. Sridevan*, for Petitioner.

K. Parasaran and *S.M. Amjad Nainar*, for Respondents.

V.S. ——— *Petition dismissed.*

Kailasam, J.
3rd February, 1970.

P.M. Natesa Mudaliar *v.* Bhuvaneswari.
C.R.P.No. 1111 of 1968.

Madras Court-fees and Suits Valuation Act (*XIV of* 1955), *section* 42 (c)—*Suit for specific performance—Plaintiff entitled to a one-fourth share—Court-fee on the market value of the one-fourth share or on the entire property.*

Under section 42 (*c*) of the Act, the plaintiff, in a suit for specific performance, claiming that he is entitled to a conveyance of an one-fourth share of the properties, has to pay Court-fee on the market value of the entire property.

Jhaver v. *Thanickachala Gramani*, (1966) 2 M.L.J. 38, distinguished.

N. Sivamani, N.K. Mitra and *V. Narayanaswamy*, for Petitioner.

V.S. Subramanyam and *K. Ramachandran*, for Respondents.

V.S. ——— *Petition dismissed.*

Veeraswami, Chief Justice and
Gokulakrishnan, J.
20th January, 1970.

M. S. Anantaraman *v.*
M. V. Sundaresan.
L.P.A. Nos. 60 and 61 of 1968.

Final Decree—Partition—Execution—Limitation—Money in Court deposit—Application for payment out—Money in Court—Not realized in execution—Amount on conversion of property sought to be divided—Application for payment out—Not a step in aid—Proven of execution not called for.

Whether an application for payment out of money in deposit in Court can be regarded as an execution petition and a step in aid will depend upon the particular circumstance. Where the money in deposit was not realised in execution, but came into Court deposit on conversion of the property which is sought to be divided, and the decree as finally made declared one of the parties to be entitled to that amount or a part of it, the process of execution is hardly called for or is necessary and in that view an application for payment out would not be regarded as an execution petition and therefore a step in aid.

N. Srivatsamani and *K.V. Dorairaj*, for Appellant.

S.V. Jayaraman, and *V. Kannan*, for Respondent.

V.S.

Appeal dismissed.

Veeraswami, Chief Justice and
Gokulakrishnan, J.
28th January, 1970.

The Chairman, Madras Port Trust, Madras *v.*
Kamala.
L. P. A. No. 102 of 1966.

Workmen's Compensation Act (VIII of 1923), *section* 3*—Arising out of and in the course of employment—Lascar employed in Port Trust—Accident and death while bringing food for Dredge Master—Claim for compensation.*

A Lascar employed in the Port Trust was sent by Dredge Master to fetch food for him. When the lascar was returning to the Port Trust with food, he was knocked down by a lorry and died. His widow preferred an accident claim.

Held, the widow is entitled to compensation.

A lascar is employed for painting, chipping wireplacing etc. But the lascar's work was extended by the dredge master also to fetch his food from his residence as a matter of routine and on practically every day so far as the deceased was concerned. When the Port Trust had not defined the duties of a lascar and the dredge master was not prohibited from employing the lascar in doing personal service, it would be reasonable to conclude that the lascar's employment extended also to fetching food. The accident is one that arises out of and in the course of discharging his duty, namely, fetching food for his Master.

V. V. Raghavan, for the Appellant.

S. Ramasubramaniam and *A. S. Ranganathan*, for the Respondent.

V.S.

Appeal dismissed.

Ismail, J.
4th February, 1970.

Lakshmi Vilas Bank Ltd., Karur *v.*
L. S. Pattabhi Chettiar.
W. P. No. 3544 of 1968.

Madras Shops and Establishments Act (XXXVI of 1947), *section* 41*—Termination of the services of an employee—Retirement on reaching age of superannuation—Not within the scope of the section—Premature termination of services, contemplated under the section.*

When an employer relieves an employee from his duties for the reason that he had reached the age of superannuation and the period of service had come to an end, such a case cannot fall within the scope of section 41 (1) of the Act.

Only a premature termination of the services of an employee can be brought within the scope of the section. Premature termination means, termination prior to the period fixed in the contract of service, if there is one, or a termination prior to the period fixed for retirement on reaching the age of superannuation prescribed

either in a contract of service, if there is one, or in the rules or regulations governing such service.

T. S. Rangarajan, for Petitioner.

T. Satyadev, Assistant Government Pleader on behalf of the 2nd Respondent.

J. Seetharaman and *K. S. Janakiraman*, for the 1st Respondent.

V.S. ——— *Petition allowed.*

Ramaprasada Rao and *Somasundaram, JJ.* *18th February*, 1970.

Varadarajulu Naidu *v.* Revenue Divisional Officer, Tirukoilur. A. No. 334 of 1966.

Land Acquisition Act (I of 1894), section 23— Acquisition of land for establishing a shandy—Land already utilised for a shandy—Compensation with reference to ordinary lands—Not a correct method—Capitalisation of income by a fair multiple—What is a fair multiple.

The acquisition is for the purpose of establishing a shandy. The land was utilised as a shandy for sufficient years. It gained a reputation as such and it is not denied. Such advance in the nature and potential of the property has to be turned to account. It is in this respect that the values arrived at by comparing the values of ordinary lands bereft of such potential in the vicinity do not reflect a fair method for computing the market value of the acquired land. The income derived from the property should therefore be taken into consideration and the same capitalised by applying a fair multiple.

In the instant case the owner of the land did not exert himself and it is the District Board or the Panchayat Board which runs the market, farms the fees and pays him his agreed share.

In this case the rate of interest cannot be blindly fixed with reference to Government securities, for, the rent derived from properties used as a public markets shops and business places will certainly be higher than the well recognised approved Government securities. The rate per cent. in such cases would vary in the year 1956 between 9 per cent. to 12 per cent.

Having regard to the fact that the land in question is a Village site, the rate has to be fixed at 9 per cent. and thus getting the multiple of 11. The owner would be entitled to the usual 15 per cent. solatium on the excess compensation.

Kanakaraj, for Appellant.

Additional Government Pleader on behalf of the Respondent.

V.S. ——— *Ordered accordingly.*

Ramaprasada Rao and *Ramanujam, JJ.* *26th February*, 1970.

M/s. Kannan Motor Transport (P.) Ltd., Chidambaram *v.* M/s. Prabhu Transports (P.) Ltd., Cuddalore. S.C.P. Nos. 10, 11, and 12 of 1970.

Constitution of India (1950), *Article* 133 *and Motor Vehicles Act* (*IV of* 1939)—*Recent grant of a permit for a particular route—Relative merits of competing operators—Grant made to an applicant for the same route or a portion of the route or for a different route—If to be treated as a relevant circumstance or not—Not a substantial question of Law—No leave to appeal to Supreme Court.*

The question whether while considering the relative merits of competing operators by the Tribunal in respect of a recent grant of permit for a particular route the grant made to an applicant for the same route or a portion of the route or for different route should be treated as a relevant circumstance or not is not a substantial question of law so as to warrant the issue of a certificate under Article 133 (1) (*a*) and (*b*) or under Article 133 (1) (*c*) of the Constitution.

V. K. Thiruvenkatachari, for *C. S. Prakasa Rao*, for Petitioner.

Additional Government Pleader, for Respondent 2.

M. Krishnappa for *K. K. Venugopal* and *V. Manivannan*, for Respondent 1.

V.S. ——— *Petition dismissed.*

Somasundaram, J.
4th March, 1970.

Sevayi Ammal *v.*
M. Somasundaram.
S. A. No. 537 of 1966.

Receiver—Partition suit—Sale by Receiver of an item of property, under orders of Court to discharge land revenue—Purchaser gets title to the specific item—Sale of some item by other sharers—Purchase of a share in the undivided property only—Receiver's sale prevails one private sale.

An estate which consisted of many villages, was owned by four branches. One member in one such branch was adjudged an insolvent. The Official Receiver in whom his share vested filed a suit for administration. The members of the other three branches were parties to the suit. Preliminary decree for partition was passed and the properties were under the management of a Receiver appointed by the Court. At the instance a creditor of a group of defendants an item was sold and purchased by the defendant herein. Subsequent to this, on the directions of the Court, the Receiver sold an item to discharge arrears of land revenue. The plaintiff was the purchaser, sued to get possession from the defendant.

Held: The plaintiff's title would have to be upheld.

The Receiver as representing the entire estate, when he sells the property on the directions of the Court, for payment of land revenue, a purpose binding upon the family and the property, would sell tangible items and not any undivided share therein. But the purchase by the defendant was only the coparcener's undivided interest in the joint family property, and his only right is a mere equity to sue for partition. But any private sale at the instance of an individual member of the family will avail nothing against the pruchaser from the Receiver.

T. V. Balakrishnan, for Appellant.

K. Hariharan and *B. Narayanan*, for Respondent.

V.S. *Appeal allowed.*

[END OF VOLUME (1970) I M.L.J. (N.R.C.).]